IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 550 OF 2004

Gauri Shankar Ramdhari Tiwari
& Anr. ..Appellants

versus

Rajaram Bhagwati Tiwari & Ors. ..Respondents

Mr. P. S. Dani for the Appellants.

Mr. Y. E. Mooman for the Respondent Nos. 1 to 3.

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CORAM : D. G. DESHPANDE,J.

DATE : 7TH MARCH ,2005

ORAL ORDER :

1. Heard counsel for the Appellants and the Respondent Nos. 1 to 3.

2. This Appeal is filed against the order dated 27.4.2004 by which the notice of motion taken out by the original Plaintiff Nos. 1 to 3 i.e. Respondents No. 1 to 3 was made absolute in terms of prayer clause (a) i.e. not to obstruct plaintiffs entry in the suit room i.e. Room No.B/302, 3rd floor, Building No.4, Ganesh Nagar, Mumbai 400 012. This order came to be passed on the basis of some documents submitted by the parties and

the trial court found that the plaintiffs have voluminous documents to show that they were occupying the old room in lieu of which the new room was granted to the defendants. Those documents i.e. ration card and other documents do make out a case that the plaintiffs were occupying the old room. Naturally therefore they got right to occupy new room.

3. Counsel for the appellants contended that the plaintiffs have not established their right to occupy old room. That question, in my opinion, will have to be decided by the court at the time of the trial. Admittedly parties i.e. original plaintiff Nos. 1 to 3 and the original defendant Nos. 4, 5 and 6 are related to each other. When questioned, learned counsel for the appellants contended that apart from the three Appellants, four more persons are residing in the said room, the area of which is between 220 to 230 sq. ft. When questioned, counsel for the original plaintiffs conceded that he has no objection if right of residence for the time being is granted i.e. till the suit is disposed of on merits, to appellant No.1 who is 70 years of age and to appellant No. 3 Devendrakumar.

4. Therefore, in the circumstances the Order of the trial court is modified. Injunction granted

shall be in respect of original plaintiff No. 1 and 3 only. The trial court is directed to hear and decide the suit on merits within six months from the receipt of this order. Parties will give co-operation to the Court in this regard and will not seek unnecessary adjournments. Appeal disposed of accordingly along with Civil application No. 746 of 2004.

7.03.2005 (D.G. DESHPANDE, J.)